



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/975,672	10/10/2001	Norman F. Sheppard JR.	17509-0019	9452
29052	7590	01/23/2006		
SUTHERLAND ASBILL & BRENNAN LLP 999 PEACHTREE STREET, N.E. ATLANTA, GA 30309			EXAMINER GRAY, PHILLIP A	
			ART UNIT	PAPER NUMBER
			3767	
DATE MAILED: 01/23/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/975,672	Applicant(s) SHEPPARD ET AL.	
	Examiner Phillip Gray	Art Unit 3767	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 October 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 26-39, 43, 52 and 56-61 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26-39, 43, 52 and 56-61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date: _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>11/25/02, 2/25/02</u>   | 6) <input checked="" type="checkbox"/> Other: <u>6/5/02</u>                 |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/24/2005 has been entered.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

Art Unit: 3767

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 26-39, 43, 52, and 56-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wise et al. (U.S. Patent Number 5,989,445) in view of Mickle et al. (U.S. Patent Number 6,289,237).

Wise discloses the claimed invention except for a telemetry system, which transmits data from a microchip device to a remote controller. Mickle teaches that it is known to use a telemetry system, which transmits data from a microchip device to a remote controller, as set forth in column 7, line 58 to column 8, line 33, to provide dynamic real-time measurements to a base station. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the micro channel system for fluid delivery device as taught by Wise with a telemetry system, which transmits data from a microchip device to a remote controller as taught by Mickle, since such a modification would provide the micro channel system for fluid delivery device with a telemetry system which transmits data from a microchip device to a remote controller for providing dynamic real-time measurements to a base station.

Claims 26-39, 43, 52, and 56-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Santini et al. (U.S. Patent Number 6,123,861) in view of Mickle et al.

Santini discloses the claimed invention except for a telemetry system, which transmits data from a microchip device to a remote controller. Mickle teaches that it is

Art Unit: 3767

known to use a telemetry system, which transmits data from a microchip device to a remote controller, as set forth in column 7, line 58 to column 8, line 33, to provide dynamic real-time measurements to a base station. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the microchip drug delivery system as taught by Santini with a telemetry system, which transmits data from a microchip device to a remote controller as taught by Mickle, since such a modification would provide the microchip drug delivery system with a telemetry system which transmits data from a microchip device to a remote controller for providing dynamic real-time measurements to a base station.

Claims 26-39, 43, 52, and 56-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Santini et al. (U.S. Patent Number 5,797,898) in view of Mickle et al.

Santini discloses the claimed invention except for a telemetry system, which transmits data from a microchip device to a remote controller. Mickle teaches that it is known to use a telemetry system, which transmits data from a microchip device to a remote controller, as set forth in column 7, line 58 to column 8, line 33, to provide dynamic real-time measurements to a base station. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the microchip drug delivery system as taught by Santini with a telemetry system, which transmits data from a microchip device to a remote controller as taught by Mickle, since such a modification would provide the microchip drug delivery system with a telemetry

Art Unit: 3767

system which transmits data from a microchip device to a remote controller for providing dynamic real-time measurements to a base station.

Claims 26-39, 43, 52, and 56-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over McDevitt et al. (U.S. Patent Number 6,908,770) in view of Mickle et al.

McDevitt discloses the claimed invention except for a telemetry system, which transmits data from a microchip device to a remote controller. Mickle teaches that it is known to use a telemetry system, which transmits data from a microchip device to a remote controller, as set forth in column 7, line 58 to column 8, line 33, to provide dynamic real-time measurements to a base station. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the microchip drug delivery system as taught by McDevitt with a telemetry system, which transmits data from a microchip device to a remote controller as taught by Mickle, since such a modification would provide the microchip drug delivery system with a telemetry system which transmits data from a microchip device to a remote controller for providing dynamic real-time measurements to a base station.

Claims 26-39, 43, 52, and 56-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shawgo et al. (U.S. Patent Number 6,730,072) in view of Mickle et al.

Shawgo discloses the claimed invention except for a telemetry system, which transmits data from a microchip device to a remote controller. Mickle teaches that it is

Art Unit: 3767

known to use a telemetry system, which transmits data from a microchip device to a remote controller, as set forth in column 7, line 58 to column 8, line 33, to provide dynamic real-time measurements to a base station. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the microchip drug delivery system as taught by Shawgo with a telemetry system, which transmits data from a microchip device to a remote controller as taught by Mickle, since such a modification would provide the microchip drug delivery system with a telemetry system which transmits data from a microchip device to a remote controller for providing dynamic real-time measurements to a base station.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phillip Gray whose telephone number is (571) 272-7180. The examiner can normally be reached on Monday through Friday, 8:30 a.m. to 4:30 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3767

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*PAG*  
PAG *Kevin C. Harmon*